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OFFICE OF PETITIONS

In re Application of	:
David FIKSTAD et al.	:
Application No. 10/764,016	: DECISION DISMISSING PETITION
Filed: January 23, 2004	: UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 23625.CON	:

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed November 7, 2005, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of prior-filed nonprovisional applications set forth in the concurrently filed amendment.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000 and after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The amendment submitted concurrently with the petition as drafted is unacceptable and, therefore, is not considered a proper reference under 37 CFR 1.78(a)(2)(i). In this regard, the amendment does not include an instruction, which unambiguously identifies the location, to delete one or more paragraphs of the specification, replace a paragraph with one or more replacement paragraphs, or add one or more paragraphs and, as such, does not comply with 37 CFR 1.121.

Application No. 10/764,016

In view of the above, the petition is **DISMISSED**.

Before the petition can be granted, petitioner must submit a substitute amendment in compliance with the aforementioned rules, along with a renewed petition under 37 CFR 1.78(a)(3).¹

Further correspondence with respect to this matter should be addressed as follows:

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Any questions concerning this matter may be directed to David Bucci at (571) 272-7099.

A handwritten signature in black ink, appearing to read 'Brian Hearn', with a long horizontal flourish extending to the right.

Brian Hearn
Petitions Examiner
Office of Petitions

¹ The claim for priority may also be made in an Application Data Sheet in compliance with 37 CFR 1.121 and 37 CFR 1.76(b)(5).